

## I. Introduction

### A. Function of the Act

The public, through the laws of the State of California, grant to the members of the city councils, boards, commissions, committees and to the staff persons who work for them the privilege of conducting the public's business, carrying out the public's policies and achieving the public's goals and objectives. Through the laws of the State of California, the public imposes upon each person who exercises that privilege the obligation:

To conduct the public's business within the lawful authority granted to him/her; and

To comply with established procedural requirements.

The Political Reform Act ("Act"), contained in Government Code sections 81000 through 91015, establishes one set of duties that the public expects its public officials to perform. The Act does not hinder, restrict, or conflict with the public official's privileged duty to conduct the public's business- Rather, compliance with the act is an integral part of those duties.

Since the Act defines what the public expects a public official to do concerning the official's economic interests, the public official's personal views in this regard are not relevant. A failure to comply with the expectations of the public, as expressed in the Act, is not excused by the making of a quality decision or the public official's good faith, integrity, or common sense.

To ensure that the public's business is properly conducted, it is incumbent upon each public official to understand what the public expects under the Act.

### B. Scope of the Act

The Act establishes duties for the public official in several different areas.

#### 1. Disclosure of Economic Interests by Public Officials

The Act designates certain elected and appointed positions within the city's government (for example: mayor, members of the city council and planning commission, and city manager) and

imposes disclosure requirements on the persons filling those positions. Upon assumption of office, annually thereafter, and upon leaving office, the person filling a designated position is required to file a statement which discloses those economic interests that might cause a financial conflict of interest to arise in the performance of the official's duties. Cal. Gov't Code §§ 87200-87210.

Also, the Act requires each city to adopt a local Conflict of Interest Code which designates city positions not designated by the Act that are involved in making city decision. The local code imposes a local disclosure requirement upon persons filling the designated positions. Cal. Gov't Code § 87302.

The Act requires designated officials to disclose various types of economic interests, to include, without limitation, the following:

- a. Investments worth \$1,000 or more in a business entity located in or doing business within the city;
- b. Interests worth \$1,000 or more in real property located within the city;
- c. A source, located in, or doing business in the city from which income (including loans) was received during the reporting period aggregating \$250 or more;
- d. Any source of a gift aggregating \$50 or more, whether or not the source does business in the jurisdiction.

When disclosure of an interest is required, the public official has a duty to disclose the interest whether there is currently or will certainly be a governmental decision involving the official's disclosed interest. Note: a public official may have certain economic interests that need to be disclosed, such as his or her personal residence, but that could still provide a basis for disqualification concerning a particular decision.

The public official lists disclosable economic interests on a form called a "Statement of Economic Interests." Statements of Economic Interests are public records. During normal business hours, any member of the public is permitted to inspect and copy any Statement of Economic Interests on file at the city.

## **2. Disqualification: Public Official Barred From Participating in a Particular Decision In Which Official Has A Financial Interest**

The Act provides that no city official, at any level, shall make, participate in making, or in any way attempt to use the official's position to influence a city decision when the official knows or has reason to know that the official has a financial interest in the decision. *See* Cal. Gov't Code § 87100.

## **3. Who is a "Public Official" For Disclosure and Disqualification Purposes**

The disclosure and disqualification provisions of the Act apply to your city's "public officials" which includes every natural person who is a member, officer, employee, or consultant of your city. Cal. Gov't Code § 82048; 2 Cal. Code of Regs. § 18701 (a).

A "member" includes, but is not limited to, salaried or unsalaried members of city boards or commissions with decision making authority. A board or commission possesses decision making authority whenever:

- It may make a final governmental decision;
- It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or
- It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

2 Cal. Code of Regs. § 18701 (a)(1).

City employees other than those mentioned in Government Code section 87200<sup>1</sup> have a disclosure obligation only if the person is in a position designated by state law or by the city's local conflict of interest code. Cal. Gov't Code § 87300. Whether or not they have a disclosure obligation, all city officers/employees are disqualified from participating in any city decision in which such individual has a disqualifying conflict of interest.

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<sup>1</sup> That is, those other than mayors, city managers, city attorneys, city treasurers, council members and certain other public officials who manage public investments.

A "consultant" under the Act includes any natural person (individual) who provides, under contract, information, advice, recommendation, or counsel to your city. Thus, an architect, building contractor, auditor, engineer, reviewer/evaluator, or traffic engineer hired by your city may be a "consultant" under the Act with both disclosure and disqualification obligations. An individual is a consultant if either of the following apply:

- The individual serves in a staff capacity with the agency and in that capacity performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified, or that should be specified, in the city's conflict of interest code; or
- The individual makes a governmental decision whether to:
  - ◊ Approve a rate, rule or regulation
  - ◊ Adopt or enforce a law;
  - ◊ Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
  - ◊ Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval;
  - ◊ Grant agency approval to a contract which requires agency approval and in which the agency is a party or to the specifications for such a contract;
  - ◊ Grant agency approval to a plan, design, report, study or similar item; or
  - ◊ Adopt, or grant agency approval of, policies, standards, or guidelines for the agency or for any subdivision thereof.

2 Cal. Code of Regs. § 19701 (a)(2).

A city's "request for proposals" may be used to eliminate potentially disqualified consultants and to announce disclosure requirements. See FPPC Davis Advice Letter, 1-91-473 (January 29, 1992), for a full discussion of the FPPC's treatment of the exclusion.

#### **4. Regulations for Campaigners**

The Act contains regulations concerning the formation of campaign committees. For persons who participate in an election campaign either as a candidate or as a campaign committee, the

Act establishes an obligation to file statements disclosing revenue received and expenditures. *See* Cal. Gov't Code § 84100 *et seq.*

## 5. Restrictions Concerning Mass Mailing at Public Expense

Regarding such things as a city newsletter, announcement or information sheets, the Act restricts the use of public funds to deliver to the public any written material that includes references to an elected official affiliated with the sending agency. *See* Cal. Code of Regs. § 18901.

## 6. Lobbyists

The Act imposes restrictions on the activities of lobbyists who lobby state officials. *See* Cal. Gov't Code §§ 86100 *et seq.*

## C. Administration of the Act

### 1. The Commission

The Act created the Fair Political Practices Commission ("FPPC") which is headed by five appointed commissioners. With its staff, the Commission has primary responsibility for the impartial, effective administration and implementation of the Act. The Commission is authorized to adopt regulations to implement the Act, enforce the provisions of the Act, and provide assistance and advice concerning compliance with the Act. *See* Cal. Gov't Code §§ 83100-83123.

### 2. Obtaining Assistance and Advice

#### a. FPPC Informal Assistance

Informally, any member of the public can contact one of the advisory divisions of the Commission by phone or letter and obtain oral and written assistance regarding the Act. 2 Cal. Code of Regs. § 18329. General areas of inquiry are:

- Questions concerning Statements of Economic Interests;
- Questions concerning whether a public official is disqualified from participating in a particular governmental decision;
- Questions concerning a city's local Conflict of Interest Code;
- Questions concerning Campaign Disclosure Statements;

- Questions concerning the use of campaign funds; and
- Matters concerning an alleged violation (these matters will be referred to the Enforcement Division).

A further discussion of the FPPC's role in providing advice and assistance occurs in the "practice tips" section (section 11) of the following chapter on the "role and responsibilities of the city attorney."

#### b. FPPC Formal Advice

A public official can also obtain formal written FPPC advice. See Cal. Gov't Code § 83114; 2 Cal. Code of Regs. § 18329. Immunity from an FPPC enforcement action or prosecution may be obtained only through formal FPPC advice. The immunity bestowed by FPPC advice is limited to the requester in the specific factual context presented and is effective only.

- The public official makes a written request for FPPC advice, not just assistance;
- The information the public official gives to the FPPC concerning the potential conflict of interest is complete and correct;
- The public official obtains the FPPC advice *prior* to participating in the decision; and
- The public official follows the FPPC advice exactly.

#### c. Commission Opinions

The Commission may issue an opinion pursuant to Government Code section 83114.

#### d. City Staff Assistance

The city attorney, city clerk and other City staff persons may provide assistance. However, a public official is not immunized from an FPPC enforcement action or prosecution by relying on city staff guidance.

e. What Do You Ask?

The city staff can provide assistance and the FPPC can provide assistance and advice in answering certain questions. For example:

"Is this asset an economic interest?"

"Is my economic interest directly involved in this decision?"

"In the public official's particular circumstance, what test or tests apply in determining whether the effect of the decision on the official's economic interest is material?"

The question, "What is the reasonably foreseeable dollar amount of the effect of the governmental decision on the official's economic interest?" is neither a legal question nor an FPPC question. It is a factual question best answered by the public official, with the assistance of an appraiser or financial consultant.

All these questions need to be answered in order to answer the fundamental question:

"Does the reasonably foreseeable financial effect of a decision on the official's economic interest disqualify the public official from participating in the decision?"